SPC Guiding Case No. 103: Case of Xu Qiang for Destroying Computer Information Systems

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Criminal / crime of destroying computer information systems / mechanical remote monitoring system

Holding

The mechanical remote monitoring system of an enterprise is a computer information system. Anyone who, in violation of state provisions, destroys the functions of an enterprise's mechanical remote monitoring system, causing the computer information system to be unable to operate normally, with serious consequences, commits the crime of destroying computer information systems.

Basic Facts

In order to strengthen the management of engineering machinery and equipment sold on installment, Zoomlion Heavy Industry Science and Technology Co., Ltd. ("Zoomlion") put into use the Zoomlion Internet of Things GPS information service system. This computer information system consists of the Zoomlion Internet of Things remote monitoring platform, GPS terminals, controllers, and displays. The system has the functions of automatically collecting, processing, storing, transmitting back, and displaying data, and of automatically controlling equipment. Among these, the controllers, GPS terminals, and displays were installed by Zoomlion on each piece of equipment during the production and manufacturing process of the engineering machinery and equipment.

Zoomlion installed the Zoomlion Internet of Things GPS information service system on all pump trucks sold under "mortgage sales," and expressly agreed in the product sale contracts that "if the buyer violates the contractual provisions, the seller has the right to take measures such as stopping the machine and locking the machine," and that "before the buyer pays the full purchase price, ownership of the product remains with the seller. Even if the buyer has obtained motor vehicle registration documents, before the buyer pays the full purchase price, ownership of the product still remains with the seller." Zoomlion's headquarters then monitored the pump trucks through its remote monitoring and maintenance platform. If a customer was found to be in arrears or defaulting on payment, the pump truck would be "locked" through the remote monitoring system; after receiving the "lock" instruction, the pump truck could still start, but could not operate.

In May 2014, the defendant Xu Qiang used a "GPS jammer" to successively unlock five Zoomlion pump trucks under the name of or managed by Zhong Moumou, Gong Moumou, and Zhang Moumou. The specific facts were as follows:

1. In early April 2014, after discovering that the pump truck he had purchased, with plate number Gui A77462, was about to be locked by Zoomlion, Zhong Moumou arranged for Xu Guanlun to help find someone to unlock it. Xu Moumou then contacted Gong Moumou to inform him of the need to unlock Zhong Moumou's pump truck. After Gong Moumou agreed, he contacted the defendant Xu Qiang by telephone to unlock the pump truck. On May 18, 2014, the defendant Xu Qiang brought the "GPS jammer" and went with Gong Moumou to Qingzhen City, Guiyang. The defendant Xu Qiang connected the signal wire of the "GPS jammer" to the electric control cabinet on the right side of the pump truck, then powered on the "GPS jammer" and successfully unlocked the pump truck with plate number Gui A77462. Afterwards, Zhong

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Moumou paid Gong Moumou an unlocking fee of RMB 40,000, and Gong Moumou paid Xu Moumou RMB 9,600 of it as an introduction fee, as agreed. On that day and the following day, Gong Moumou also brought the defendant Xu Qiang to permanently unlock three pump trucks — with plate numbers Xiang AB0375, Xiang AA6985, and Xiang AA6987 — that his brother-in-law Huang Mou had purchased from Zoomlion and Changsha Zoomlion Used Equipment Sales Co., Ltd. on installment. Afterwards, Gong Moumou paid the defendant Xu Qiang a total of RMB 30,000 for unlocking the four pump trucks.

2. In May 2014, Zhang Moumou purchased a pump truck from Zoomlion by mortgage loan. Because of arrears in payment, the pump truck was locked by Zoomlion through its Internet of Things system and could not operate normally. Zhang Moumou then contacted the defendant Xu Qiang by telephone to unlock his pump truck. On May 17, 2014, the defendant Xu Qiang brought the “GPS jammer” to Xiangyang City, Hubei Province, and unlocked Zhang Moumou’s pump truck with plate number E FE7721 using the same method. Afterwards, Zhang Moumou paid the defendant Xu Qiang an unlocking fee of RMB 15,000.

Upon appraisal, after the GPS terminals of Zoomlion’s pump trucks with plate numbers Gui A77462, Xiang AB0375, Xiang AA6985, and Xiang AA6987 had been removed and their control programs modified, the Zoomlion Internet of Things GPS information service system was unable to carry out real-time monitoring and remote locking of the pump trucks.

On November 7, 2014, the defendant Xu Qiang voluntarily surrendered to the public security organ. During the trial, the defendant Xu Qiang returned his illegal gains of RMB 45,000.

Judgment

On December 17, 2015, the Yuelu District People’s Court of Changsha City, Hunan Province, rendered Criminal Judgment (2015) Yue Xing Chu Zi No. 652: (1) the defendant Xu Qiang committed the crime of destroying computer information systems and was sentenced to fixed-term imprisonment of two years and six months; and (2) the defendant Xu Qiang’s illegal gains of RMB 45,000 were recovered and turned over to the State Treasury. The defendant Xu Qiang was dissatisfied and appealed. On August 9, 2016, the Intermediate People’s Court of Changsha City, Hunan Province, rendered Criminal Ruling (2016) Xiang 01 Xing Zhong No. 58: the appeal was dismissed and the original judgment was affirmed. The ruling took legal effect.

Reasoning

The court’s effective judgment held that Article 11 of the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Endangering the Security of Computer Information Systems provides that “computer information system” and “computer system” mean systems with the function of automatically processing data, including computers, network equipment, communication equipment, automated control equipment, and the like. In this case, the Zoomlion Internet of Things GPS information service system was composed of the Zoomlion Internet of Things remote monitoring platform, GPS terminals, controllers, displays, and the like, and had the functions of automatically collecting, processing, storing, transmitting back, and displaying data and automatically controlling equipment. This system was communication equipment and automated control equipment with the function of automatically processing data, and thus was a computer information system within the meaning of the Criminal Law. The defendant Xu Qiang used a “GPS jammer” to modify and interfere with the Zoomlion Internet of Things GPS information service system, causing the system to be unable to carry out real-time monitoring and remote locking of the pump trucks in issue. This was the destruction of the functions of a computer information system, causing the computer information system to be unable to operate normally, and the consequences were especially serious. Pursuant to Article 286 of the Criminal Law, the defendant Xu Qiang constituted the crime of destroying computer information systems. After committing the crime, Xu Qiang voluntarily surrendered and truthfully confessed his own crimes, which constituted voluntary surrender, and he could be given mitigated punishment in accordance with the law. Xu

Qiang returned all of his illegal gains, showing repentance, and could be given lighter punishment as appropriate. As to the appeal and defense opinions raised by Xu Qiang and his defense counsel that “he had voluntarily surrendered and had returned all illegal gains, so the first-instance sentence was excessively heavy,” upon examination, Xu Qiang destroyed computer information systems, with illegal gains of RMB 45,000 and especially serious consequences, and should have been sentenced to fixed-term imprisonment of five years or more. The first-instance judgment comprehensively considered his circumstances of voluntary surrender and return of all illegal gains, mitigated his punishment, and sentenced him to fixed-term imprisonment of two years and six months; the sentence was appropriate. The appeal and defense opinions were not adopted. The original judgment found the facts clearly, the evidence was conclusive and sufficient, the law was correctly applied, the sentence was appropriate, and the trial procedure was lawful.

Relevant Legal Provisions

Paragraphs 1 and 2 of Article 286 of the Criminal Law of the People’s Republic of China.

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